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Government Notice of Motion, dated February 12, 2010

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Court File No. T-1580-09

FEDERAL COURT

BETWEEN:

ABUSOUFIAN ABDELRAZIK

Plaintiff

and

ATTORNEY GENERAL OF CANADA and LAWRENCE CANNON

Defendants

NOTICE OF MOTION

TAKE NOTICE THAT the Defendants, the Attorney General of Canada and Lawrence Cannon, will make a motion to the Court on such date as shall be determined by the Case Management Judge or as soon thereafter as the motion can be heard, at Ottawa.

THE MOTION IS FOR:

1. An Order pursuant to Rule 76 of the *Federal Courts Rules* amending the style of cause and paragraph 4 of the Statement of Claim by substituting "Her Majesty the Queen" for "Attorney General of Canada";
2. An Order pursuant to Rule 221(1)(a) of the *Federal Courts Rules* amending the style of cause by removing Lawrence Cannon as Defendant on the ground that this Court is without jurisdiction over the Defendant Cannon, striking out paragraphs 2, 5 and 148 in their entirety and ordering consequential amendments to paragraphs 131, 132, 133, 134, 135, 147, 150, 151, 158, 160, 161 and 162;

3. An Order pursuant to Rule 221(1)(a) of the *Federal Courts Rules* striking out:
- (a) paragraph 69 of the Statement of Claim as disclosing no reasonable cause of action in conspiracy;
 - (b) paragraph 136 of the Statement of Claim as disclosing no reasonable cause of action in false imprisonment;
 - (c) paragraph 137 of the Statement of Claim as disclosing no reasonable cause of action for breach of section 7 of the *Canadian Charter of Rights and Freedoms*;
 - (d) paragraphs 139 to 145 of the Statement of Claim as disclosing no reasonable cause of action for breach of the prohibition against torture;
 - (e) paragraph 146 of the Statement of Claim as disclosing no reasonable cause of action for breach of section 12 of the *Canadian Charter of Rights and Freedoms*;
 - (f) paragraphs 152 to 155 of the Statement of Claim as disclosing no reasonable cause of action for breach of fiduciary duty;
 - (g) paragraph 156 of the Statement of Claim as disclosing no reasonable cause of action in negligence; and,
 - (h) or, in the alternative, further and better particulars respecting these causes of actions.
4. An Order pursuant to Rule 221(1)(b) striking out portions of paragraphs 5, 6, 7, 10, 15, 16, 17, 18, 19, 20, 48, 57, 70, 71, 81, 82, 103, 114, 115, 117, 123 of the Statement of Claim as immaterial or redundant;

5. An Order pursuant to Rule 221(1)(c) striking out portions of paragraphs 6, 11, 35, 36, 65, 70, 105, 121 of the Statement of Claim as scandalous, frivolous or vexatious;
6. An Order pursuant to Rule 181(2) for further and better particulars of the allegations made in paragraphs 8, 9, 29, 30, 32, 41, 44, 47, 64, 65, 69, 73, 79, 80, 100, 101, 107, 115, 117, 128, 133, 134, 136, 137, 141, 142, 143, 152, 156 (a) and (b) of the Statement of Claim;
7. An Order awarding costs of this motion to the Defendants; and
8. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff commenced this action by Statement of Claim issued by the Registry of this Honourable Court on 21 September 2009.

The Defendants

2. An action against the Crown in Federal Court is brought against Her Majesty the Queen as defendant. The Plaintiff has improperly named the Attorney General of Canada as a Defendant in this action.
3. This Honourable Court has no jurisdiction to entertain an action against the Defendant Lawrence Cannon. Applying the second branch of the test for Federal Court jurisdiction laid down by the Supreme Court of Canada, there is no existing body of federal law essential to the disposition of this case which nourishes a statutory grant of jurisdiction. The case rests on alleged common law torts and breaches of the *Canadian Charter of Rights and Freedoms* which do not constitute

federal law within the meaning of that test. Accordingly, Lawrence Cannon must be struck out as a Defendant and references to the Defendant Cannon must be deleted from the Statement of Claim.

No Reasonable Cause of Action

4. The Statement of Claim does not disclose a reasonable cause of action in conspiracy, in false imprisonment, for breach of sections 7 and 12 of the *Charter*, for breach of fiduciary duty and in negligence.
5. The Plaintiff fails to plead the material facts necessary to establish a reasonable cause of action in conspiracy. A proper pleading of conspiracy should describe who the several parties are and their relationship with each other; it should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy; it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.
6. At paragraph 69 of the Statement of Claim, the Plaintiff alleges that "[b]y covertly undermining the July 23, 2004 repatriation effort, and the July 26, 2004 Casablanca flight, the [Privy Council] Office] was conspiring to keep the Plaintiff in Sudan indefinitely". This bald allegation is insufficient to establish a reasonable cause of action.
7. The Plaintiff fails to plead the material facts necessary to establish a reasonable cause of action in false imprisonment. To plead the tort of false imprisonment, a plaintiff must allege the fact of imprisonment by the defendant and the absence of reasonable cause therefor.

8. At paragraph 136 of the Statement of Claim, the Plaintiff alleges that the Defendant requested the Government of Sudan to imprison the Plaintiff without legal grounds and shared information about the Plaintiff with the Government of Sudan to facilitate his continued imprisonment. He does not allege that the Defendants directly imprisoned the Plaintiff. In the absence of that material fact, there is no cause of action for false imprisonment.
9. The Plaintiff fails to plead the material facts necessary to establish a breach of section 7 of the *Canadian Charter of Rights and Freedoms*. Section 7 guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
10. At paragraph 137, the Plaintiff pleads that by deliberately encouraging or prompting the Sudanese to imprison the Plaintiff without reasonable grounds, the defendant violated the Plaintiff's rights under section 7 of the *Charter*. In paragraph 138 of the Statement of Claim, the Plaintiff does not plead the legal basis upon which he asserts that the *Charter* applies to the conduct alleged; he does not describe with precision the conduct alleged to engage section 7; and he does not set out the relevant fundamental principles of fundamental justice. This pleading is insufficient to establish a breach of section 7.
11. The Plaintiff fails to plead the material facts necessary to establish a breach of section 12 of the *Canadian Charter of Rights and Freedoms*. Section 12 provides that everyone has the right not to be subjected to cruel and unusual treatment or punishment.
12. At paragraphs 139 to 145 of the Statement of Claim, the Plaintiff pleads that the Defendant owes a legal duty to the Plaintiff to prevent torture at the hands of others. No such independent tort has been recognized in Canadian law.

13. At paragraph 146 of the Statement of Claim, the Plaintiff pleads that the Defendant was "directly or indirectly responsible for the Plaintiff's detention in Sudan, with the knowledge he would be subjected to cruel and unusual treatment of punishment" and thereby breached the Plaintiff's right under section 12. The Plaintiff does not plead the legal basis upon which he asserts that the *Charter* applies to him while in custody in Sudan. Nor does he plead that the Defendants subjected him to any cruel or unusual treatment or punishment. Accordingly, he has failed to plead the material facts necessary to establish a reasonable cause of action for breach of section 12.
14. The Plaintiff fails to plead the material facts necessary to establish a breach of a fiduciary duty. He must plead material facts to demonstrate (1) the existence of a fiduciary relationship with the Crown, (2) the existence of a duty within the scope of that relationship owed to him by the Crown and (3) a breach of that alleged duty.
15. At paragraphs 152 to 155, the Plaintiff alleges the breach of a fiduciary duty. However, he does not plead the facts necessary to establish (1) the existence of an express undertaking of loyalty that is the essential characteristic of a fiduciary relationship, (2) the source and nature of the specific duties alleged and (3) the conduct that he says infringes that duty of loyalty.
16. The Plaintiff fails to plead the material facts necessary to establish a reasonable cause of action in negligence. The Plaintiff must plead material facts to demonstrate that a duty of care has been recognized at law or is justified in light of the relationship between the parties, considering foreseeability, proximity and policy; to establish the relevant standard of care and a breach thereof; and to demonstrate causation between that breach and any damage suffered.

17. The allegations of negligence set out in paragraph 156 do not describe the source and nature of the duty of care alleged, the standard of conduct that ought to have been observed and the conduct that allegedly fell below that standard. Nor does he plead material facts to demonstrate that the breach alleged caused or contributed to the damages suffered.

Immaterial or Redundant Pleadings

18. Paragraphs 5, 6 and 7 of the Statement of Claim contain allegations that are redundant in that they duplicate more specific allegations made elsewhere in the Statement of Claim. The Defendants ought not to be required to plead to them.
19. Paragraphs 10, 15, 16, 17, 18, 19, 20, 48, 57, 70, 71, 81, 82, 103, 114, 115, 117 and 123 of the Statement of Claim contain allegations that are immaterial to the causes of action alleged.

Scandalous, Frivolous or Vexatious Pleadings

20. Paragraphs 6, 11, 35, 36, 65, 70, 105, 121 of the Statement of Claim are scandalous, frivolous or vexatious.

Further and Better Particulars

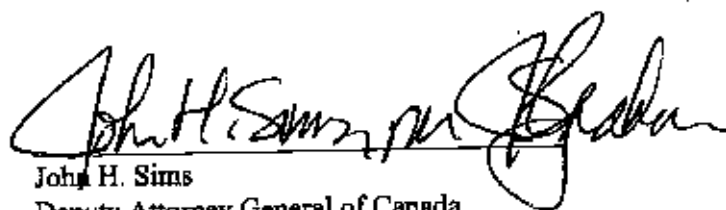
21. Counsel for the Defendants served a request for further and better particulars on 29 October 2009. Counsel for the Plaintiff provided a chart setting out further particulars on demand for particulars on 21 January 2010.
22. The particulars are not sufficient to plead and to permit search for documents (affidavit).

23. The Defendants plead and reply upon Rules 3, 76, 173, 174, 181, 208 and 221 of the *Federal Courts Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of deponent regarding particulars to be determined.

February 12, 2010



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Per: J. Sanderson Graham

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